

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

DARRYL GUMM,

Petitioner, : Case No. 1:98-cv-838

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

BETTY MITCHELL¹, Warden,
Mansfield Correctional Institution,

Respondent.

ORDER VACATING STAY

On March 29, 2011, District Judge Rice granted a conditional writ of habeas corpus in this capital habeas corpus case on Claims Two, Three, and Four of Gumm's Third Amended Petition, "the condition being that the state conduct a new trial of Petitioner within 180 days from the date of final judgment in these proceedings." (Decision and Entry, Doc. No. 208, PageID² 1306). Judgment was entered the same day (Doc. No. 209).

On April 1, 2011, the Warden's unopposed Motion to Stay Execution of the Writ was granted, pending final disposition of the Warden's intended appeal (Doc. No. 210). On

¹ The Court takes judicial notice that Al Lazaroff has succeeded Betty Mitchell as Warden of the Mansfield Correctional Institution and is thereby automatically substituted as Respondent in this case pursuant to Fed. R. Civ. P. 25. As if the Court's standard practice, the caption will remain as set forth above.

² When any document is filed with this Court, the Court's electronic filing system affixes a unique Page Identification Number in the upper right hand corner of every page. The attention of the parties is directed to this Magistrate Judge's Standing Order of May 8, 2014, which provides in pertinent part "All references to the record in this Court must be to the filed document by title, docket number, and PageID reference. (E.g., Defendant's Motion to Dismiss, Doc. No. 27, PageID ____.) The large majority of cases before this Magistrate Judge are habeas corpus cases with large state court records and correct citation to the record is critical to judicial economy. Therefore, nonconforming filings will be stricken.

December 22, 2014, the Sixth Circuit affirmed this Court's final judgment. *Gumm v. Mitchell*, ___ F.3d ___, 2014 U.S. App. LEXIS 24245 *29 (6th Cir. 2014). On February 9, 2015, the Sixth Circuit issued its Mandate, returning jurisdiction to this Court (Doc. No. 221).

Accordingly, the Stay of Execution of the Writ is VACATED. The time within which the State must retry Petitioner under the conditional writ runs until August 8, 2015.

February 9, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge